



May 15, 2002

Mr. Richard S. Talbert  
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612 South Texas  
Weslaco, Texas 78596-6222

OR2002-2575

Dear Mr. Talbert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162988.

The Weslaco Development Committee, Inc. (the "committee"), which you represent, received a request for eight categories of information regarding Caldwell/VSR, Inc. You indicate that the committee does not have any information responsive to items 2 and 8 of the request.<sup>1</sup> Further, you have asked the requestor to clarify item 1 of his request. *See* Gov't Code § 552.222 (providing that governmental body may ask the requestor to clarify request if what information is requested is unclear to governmental body). You claim that the submitted information is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You acknowledge that the committee is a "governmental body" and that the requested records are subject to the disclosure requirements of the Public Information Act. *See* Gov't Code § 552.003(1)(A)(xii). You claim, however, that the submitted documents are excepted under section 552.131 of the Government Code. Section 552.131 provides:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

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<sup>1</sup>We note that a governmental body is not required to obtain information not in its possession. Open Records Decision No. 558 (1990). Further, the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from the requirements of Section 552.021.

(c) After an agreement is made with the business prospect, this section does not except from the requirements of Section 552.021 information about a financial or other incentive being offered to the business prospect:

(1) by the governmental body; or

(2) by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source.

Gov't Code, § 552.131. You explain that the committee is currently involved in negotiations with Caldwell/VSR regarding lease and construction agreements that center around the relocation of Caldwell/VSR's business operations to the City of Weslaco (the "city"). You further indicate that the submitted documents are part of a potential economic development incentive package that may be offered to Caldwell/VSR. You also state that economic development negotiations are ongoing between the city and Caldwell/VSR and that these negotiations have yet to result in an agreement. Based on your representations and our review of the submitted information, we conclude that you may withhold the submitted information from disclosure pursuant to section 552.131(b) of the Government Code. We note, however, that the applicability of section 552.131(b) ends once an agreement is made with the business prospect. Gov't Code § 552.131(b), (c).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 162988

Enc: Submitted documents

c: Mr. Ignacio Elizondo  
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(w/o enclosures)